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AZ CORP COMMISSION  
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**BEFORE THE ARIZONA CORPORATION COMMISSION**

**COMMISSIONERS**

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PAUL NEWMAN

SANDRA D. KENNEDY

BOB STUMP

BRENDA BURNS

Arizona Corporation Commission

**DOCKETED**

JUL 11 2012

DOCKETED BY

*JM*

**IN THE MATTER OF THE  
APPLICATION OF CLEAR SPRINGS  
UTILITY CO., INC., FOR AN  
INCREASE IN RATES**

**and**

**IN THE MATTER OF THE  
APPLICATION OF CLEAR SPRINGS  
UTILITY CO., INC., FOR AUTHORITY  
TO INCUR LONG-TERM DEBT**

Docket Nos. W-01689A-11-0401  
W-01689A-11-0402

**RESPONSE TO STAFF'S MOTION  
TO PROCEED WITHOUT A  
HEARING**

Clear Springs Utility Co., Inc. ("Company"), hereby files its response in opposition to Staff's request to proceed without a hearing. The Company has a right to a hearing and is not waiving this right. Therefore, for the reasons stated below, the Company requests that the court proceed with the hearing schedule previously ordered.

1     **1.     The Company Has a Right to a Hearing.**

2             A public utility is entitled to due process when a ratemaking body undertakes to  
3 calculate a reasonable return for the use of its property and services by the public.

4  
5 *Residential Utility Consumer Office v. Arizona Corp. Com'n*, 199 Ariz. 588, 593, 20 P.3d  
6 1169, 1174 (Ariz.App. Div. 1,2001). Due process requires meaningful notice and the  
7 right to a hearing. *Phoenix Metals Corp. v. Roth*, 79 Ariz. 106, 109, 284 P.2d 645, 647  
8 (1955). The matter before the Commission is a rate case. The Company is not waiving  
9 its right to a hearing. Therefore, as a matter a right, the Company is seeking a hearing as  
10 scheduled.  
11

12  
13     **2.     A Hearing Is Necessary Because Staff's Proposed Rates Are Not Just and**  
14     **Reasonable as Required by Law.**

15             The Commission's rate-making authority is subject to the "just and reasonable"  
16 clauses of Article 15, Section 3 of the Arizona Constitution. *Residential Utility*  
17 *Consumer Office v. Arizona Corp. Com'n*, 199 Ariz. 588, 591, 20 P.3d 1169,  
18 1172 (Ariz.App. Div. 1,2001). When setting rates, the Commission is supposed to focus  
19 on the principle that the utility's revenue should be sufficient to meet its operating costs  
20 and to give the utility a reasonable rate of return. *Scates v. Arizona Corp. Comm'n*, 118  
21 Ariz. 531, 533-34, 578 P.2d 612, 614-15 (App.1978).  
22

23  
24             Here, under Staff's proposal, setting aside the financing issues, the water division  
25 would have a net loss of \$869. See Schedule JMM-W16 (lines 45-47, "Without  
26 Surcharge" column).<sup>1</sup> Put another way, using its own "formula", Staff's proposed rates  
27

28  

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<sup>1</sup> The WIFA Loan Payment Interest should be subtracted, not added, to operating income to determine net income.

1 are not even sufficient to meet all of the water division's operating costs.

2 Further, it is clear that that Staff's objective was to give the water division \$10,000  
3 to meet all of its operational costs in addition to those recognized by Staff. The Company  
4 has the right to examine Staff to determine if Staff is setting a minimum budget of  
5 \$10,000 for water companies is a new Commission policy or is this applicable to Clear  
6 Springs only. In addition, Staff has other new and novel approaches that limit the  
7 Company's revenue. For example, rather than using real water testing expenses, Staff is  
8 now simply setting a budget for the Company to perform the minimum amount of testing  
9 at substantially reduced rates. Moreover, Staff has several recommendations that would  
10 prevent the new rates for taking effect unless the Company performed certain compliance  
11 tasks. The Company has a right to cross-examine Staff's witnesses regarding these  
12 issues. Thus, a hearing is necessary.

13 **3. Staff's Support for Cancelling the Hearing Is Not Accurate.**

14 Finally, as this court knows, water and sewer company rate cases proposing annual  
15 operating revenues of less than \$250,000 often proceed without a hearing. Staff justifies  
16 its request to cancel the hearing by stating Staff's recommended revenue requirements for  
17 the Company's water division is \$216,023. Staff's position is perplexing because Staff is  
18 proposing that the total annual operating revenue for the Company would be \$258,465,  
19 which exceeds the \$250,000 threshold. See Schedule JMM-W10 (Staff Recommended  
20 with Surcharge). Furthermore, regardless of Staff's position, even after the Company  
21 compromised on some positions, the Company's requested revenues of \$252,582 still  
22 exceed the \$250,000 threshold.

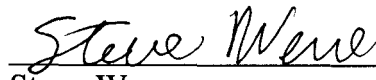
1 Staff also implies that its recommendations are simply standard, formula-driven  
2 recommendations. But as explained above, this is not the case. Here, Staff has adopted  
3 several new and novel arguments to reduce the water division's revenue requirement.  
4 Not only are Staff's positions highly unusual, they do not meet the standards required by  
5 law.  
6

7  
8 **4. Summary and Action Requested.**

9 Both Staff and the Company recommend annual revenue requirements that exceed  
10 \$250,000. Moreover, Staff's positions raise several issues that need to be addressed at  
11 hearing. This Court and the Company are entitled to have Staff explain its positions.  
12 Thus, the Court should deny Staff's request to cancel the hearing and conduct the hearing  
13 as scheduled.  
14

15 RESPECTFULLY SUBMITTED this 11<sup>th</sup> day of July, 2012.  
16

17 **MOYES SELLERS & HENDRICKS LTD.**

18  
19   
20 Steve Wene

21 Original and 13 copies of the foregoing  
22 filed this 11<sup>th</sup> day of July, 2012 with:

23 Docket Control  
24 Arizona Corporation Commission  
25 1200 West Washington  
26 Phoenix, Arizona 85007

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